

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LINWOOD TRACY, JR.,

Plaintiff,

v.

TIFFANY MILES, et al.,

Defendants.

Case No. 3:12-cv-00540-MMD-VPC

ORDER

(Plf.'s Motions for Recusal
– dkt. no. 21, 22)

Before the Court are Plaintiff's Motions for Recusal. (Dkt. nos. 21 and 22.) For the reasons stated below, the Motions are denied.

On May 14, 2013, the Court dismissed Plaintiff's case for lack of personal jurisdiction. (Dkt. no. 20.) Plaintiff now argues that the Court must recuse itself from this proceeding because the same Court is presiding over a criminal case where Tracy is a defendant.

I. DISCUSSION

28 U.S.C. § 455, provides that:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

1 (b) He shall also disqualify himself in the following circumstances:

2 (1) Where he has a personal bias or prejudice concerning a party, or
3 personal knowledge of disputed evidentiary facts concerning the
proceeding;

4 (2) Where in private practice he served as lawyer in the matter in
5 controversy, or a lawyer with whom he previously practiced law served
6 during such association as a lawyer concerning the matter, or the judge or
such lawyer has been a material witness concerning it;

7 (3) Where he has served in governmental employment and in such
8 capacity participated as counsel, adviser or material witness concerning
the proceeding or expressed an opinion concerning the merits of the
particular case in controversy


9 None of the circumstances requiring disqualification exist here. The Court's
10 administration of justice in Tracy's criminal case does not reasonably call into question
11 its impartiality in this separate, independent civil action. Nor does bias or prejudice exist
12 merely because Tracy is both a civil plaintiff and a criminal defendant before the Court.

13 In fact, "[a]lthough a judge must recuse" herself "from any proceeding in which
14 any of these criteria apply, he or she must not simply recuse out of an abundance of
15 caution when the facts do not warrant recusal. Rather, there is an equally compelling
16 obligation not to recuse where recusal is not appropriate." *United States v. Sierra Pac.*
17 *Indus.*, 759 F. Supp. 2d 1198, 1200-01 (E.D. Cal. 2010) (citing *United States v. Holland*,
18 519 F.3d 909, 912 (9th Cir. 2008) (parenthetical omitted). Recusal is not appropriate
19 here, and would therefore be improper.

20 **II. CONCLUSION**

21 IT IS THEREFORE ORDERED that Plaintiff's Motions for Recusal (dkt. nos. 21
22 and 22) are DENIED.

23 DATED THIS 28th day of May 2013.

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26 _____
27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE